HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.356 of 2006

Shafqat Khan aged about 40 years
S/o Sri Ishtiyaq Khan
Proprietor S.K. Rolling Shutters
R/o Sheergoita
P.S. Rudrapur
District U.S. Nagar .....Applicant

Versus

1. State of Uttaranchal
2. Niranjan Lall
   S/o Sri Bhure Ram
   R/o Niranjan Lal Iron Association
   Galla Mandi, Rudrapur
   P.S. Rudrapur
   District U.S. Nagar .....Respondents

Sri S. K. Mandal learned counsel for the applicant.
Sri Amit Bhatt learned A.G.A.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the proceedings and the summoning order dated 17.09.2004 passed by the Judicial Magistrate, Rudrapur in criminal case no.437/2005 Niranjan Lal Vs. Shafqat under section 138 Negotiable Instrument Act.

2. Brief facts of the case as alleged in the petition are that the respondent No.2 filed a complaint on 17.09.2004 alleging therein that the applicant-accused has issued a cheque towards the re-payment of the respondent No.2.When the complainant submitted the cheque before the bank, the cheque was dishonoured by the bank due to insufficiency of funds. Thereafter, the complainant served notice upon the applicant as required under section 138 of the Negotiable Instrument

Act. On the said complaint, the learned Magistrate took cognizance against the applicant vide its order dated 17.09.2004. Feeling aggrieved by this, the applicant preferred the present petition.

3. Learned counsel for the applicant contended that the respondent No.2 has filed a notice before the court below in which neither the respondent No.2 nor his counsel had made signature on the notice. It was contended that the complaint is not maintainable. Learned AGA refuted the contention and contended that the prosecution can file the signed copies at the time of adducing the evidence. The applicant had an opportunity to cross-examine the said witness on this point. This is a question of fact which can be decided during the trial.

4. Learned counsel for the applicant contended that the applicant had issued a cheque No.855113 ECO Bank Rudrapur on 20.08.2004. The Eco Bank sent a reply to the respondent No.2 in which it has been stated that the Cheque No.851113 has been dishonoured and in the said reply there was no party name and no signature of the bank authority. It was further contended on behalf of the applicant that the entire compliant and the proceedings are liable to be quashed. Learned AGA refuted the contention. Perusal of the record reveals that the applicant has taken a plea which can only be decided by the trial court. Perusal of the complaint and the statements recorded under section 200 & 202 Cr.P.C. transpires that there is a prima facie case against the applicant at this stage. This court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in **M.**

Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822 that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

5. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

6. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 24.05.2006
LSR